IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.7217 OF 2005

President/Secretary, Kalina Education Society, Mumbai and another.).. Petitioners

Versus

Smt.Surekha Satish Satpute and others).. Respondents

Mr.R.M. Nakhawa for the Petitioners.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 21ST OCTOBER 2005

P.C.:

. This Petition challenges the order dated 30th July 2005 passed by the Presiding Officer, School Tribunal, Pune in Appeal No.Mum/97 of 2001 whereby the Appeal filed by Respondent No.1 has been allowed. The contention raised in the Petition is that although the post was reserved for N.T. category candidate, the Petitioners appointed Respondent No.1 who belongs to a Scheduled Caste category. Thereafter, she was appointed for a year each time after which approval was not granted. The Petitioners consequently terminated the services of Respondent No.1 by a letter which was received by her on 28th August 2001. The Tribunal has considered the contention of the Petitioner that her appointment was against an N.T. category and therefore she could not be confirmed in service. The Tribunal, in my view, has not committed any error by directing the

Petitioners to reinstate Respondent No.1.

2. In the case of *Shakuntala Ganpatsa Shirbhate* vs. *Industrial Weaving Cooperative Society and others*, **1995 SCC (L&S) 144**, the Supreme Court has interpreted Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as "the Rules") framed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act of 1977 (hereinafter referred to as "the Act") and have held that interchangeability is permitted by appointment of a candidate who does not belong to the category for which the post is reserved, if he belongs to another backward class. Accordingly, the School appointed Respondent No.1, who belongs to Scheduled Caste category, against an N.T. category vacancy and, therefore, the appointment must be deemed to be on probation. She had completed two years of service and, therefore, is deemed to be confirmed in service under the provisions of the Act and the Rules framed thereunder. The Tribunal has committed no error by directing the Petitioners to reinstate Respondent No.1. In any event, by the impugned orders passed by the Tribunal, she was reinstated in service in August 2002 and has been paid wages since then. The wages would be payable to her from the date when she was terminated from service upto the date when she was reinstated pursuant to the orders of the Court.

Writ Petition rejected.